

IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

Michael Miller Petitioner, v. COUNTY OF LANCASTER, ET. AL., Respondents.	Civ. No.: 1:24-CV-00014 Judge Jennifer P. Wilson Magistrate Judge Martin C. Carlson
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**REPLY BRIEF FOR APPEAL OF MAGISTRATE'S ORDER AND
RECOMMENDATIONS**

Petitioner/Appellant briefs the court in support of his appeal for a *de novo* review of Petitioner's objections to Magistrate's order and recommendations. This brief is filed in reply to Respondent, Office of Open Records's ["OOR"] response (Doc. 49) to the appeal brief (Doc. 40).

I. ARGUMENT

A. The Record of Petitioner's Objections

Because OOR's brief (Doc. 49) challenges the specificity of Miller's objections to Magistrate Carlson's order and report, Miller provides below a reference table to the record of his objections, both before and during this appeal.

OOR's claim that Miller has not stated his specific objections in this court is demonstrably false, as follows:

Issue/Objection	Doc. #
Objection to Set Aside Default	23
Objection to Extension of Time to Plead	25
Default Judgment	20, 27
Objection to OOR's Untimely Filed Motion to Dismiss	28, 29, 30
Objection to Magistrate's order and report	40
Objection to Proceedings under FRCP 55	46

B. OOR's Description of Objections as "Generalized".

OOR's brief mischaracterizes Miller's objections as "generalized disagreements". On three occasions, OOR's brief states that Miller's objections are 'generalized'. See p. 2 and p. 3. OOR's counsel does not state which definition of the word 'generalized' she relies upon, nor why she believes that Miller's objections are 'generalized.' She just summarily says that they are, *ipse dixit.*

Counsel's possible motive to characterize Miller's objections as 'generalized' is rooted in a single word in 28 USC 636(b)(1)(C), the statute

which protects Miller's right of appeal. It states that the appellant's objections must be "specific." Therefore, counsel reflexively chooses the word 'generalized' as an antonym for the word 'specific.'

Having cast appellant's objections as 'generalized', the Respondent cites *Goney v Clark*, 749 F.2d 5 (3d Cir. 1984) as advising the court to decline *de novo* review of the appellant's objections. *Goney* is a case where a *pro se* inmate objected to the magistrate's report and recommendation wherein the magistrate recommended that the district court rule against him. *Goney*, 7. The district court adopted the magistrate's recommendation and report. The Court of Appeals upheld the district court's ruling because Goney failed to offer an objection to a specific portion of the report. *Goney*, 7.

The problem for OOR is that *Goney* is only relevant in so far as Miller's objections share the deficiencies of *Goney*, but the instant record shows they do not. Appellant (as with his preceding briefs noted in the table above) has written his objections with specificity to facts and law. Consequently, *Goney* is completely inapplicable to the facts in this case. Moreover, Respondent fails to show how the facts in *Goney* are similar in any way to the facts before the court. Instead, Respondent simply declares *ipse dixit* that *Goney* illustrates that Miller's objections are "insufficient" and "do not illustrate any error of law or manifest injustice on the record to be corrected and thus are not entitled to a de novo

review.” (p. 3). Therefore, since Respondent is completely unable to identify a single applicable case in support of her opposition, counsel asks the judge to grant Appellant’s request for *de novo* review.

C. Use of Non-Precedential Opinions

Since Miller’s objections are specific and not generalized, the remainder of OOR’s brief is largely moot. However, Miller addresses the manner by which counsel argues her point. Counsel cites three non-precedential opinions -- *Lee v. Mecca*, No. 22-2871 (3d Cir. Sept. 8, 2023), *Wiggins v. UNIVERSAL PROTECTION SERVICE, LLC*, No. 23-1054 (3d Cir. Aug. 7, 2023), and *J SUPOR & SON TRUCKING & RIGGINS COMPANY, INC. v. Kenworth Truck Co.*, No. 18-2353 (3d Cir. Oct. 23, 2019). Each of these opinions is footnoted, “This disposition is not an opinion of the full Court and under I.O.P. 5.7 does not constitute binding precedent.” Miller objects to this unreliable jurisprudence.

D. Non-Responsiveness to the Appeal Brief.

Counsel’s brief is not responsive to the appeal brief. LR 72.2 requires OOR’s brief to be “responsive” to the appellate brief (which in turn must be responsive to the magistrate’s recommendations). The appeal brief is rooted in applying the holding case, *United States v. \$55,518.05 IN US CURRENCY*, 728

F.2d 192 (3d Cir. 1984), to the instant facts. However, counsel's brief is not responsive to this material. Instead, she presents a baseless argument and attempts to support it with non-precedential opinions that are not responsive to the instant facts and *\$55,518.05*. Consequently, OOR's brief is non-responsive to the appeal brief.

II. CONCLUSION

In its brief, Respondent fails to cite a single case that is helpful to the court. Specifically, Respondent cites one case with easily distinguishable facts, and three cases that are non-precedential. Furthermore, Respondent completely disregards the applicable case cited by the Appellant. See *United States v. \$55,518.05 IN US CURRENCY*, 728 F.2d 192 (3d Cir. 1984). For these reasons, OOR's opposition brief should be disregarded and Appellant's request for a *de novo* review should be granted.

Respectfully Submitted:

/s/ Michael Miller

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Date: May 14, 2024

CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served a copy of this document on all parties or counsel by operation of the Court's electronic filing system.

Respectfully Submitted,

/s/*Michael Miller*

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Dated: May 14, 2024